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New York Divorce and Family Law Blog

[Eliminating the Risks of Separation for the "Un-Divorced"](#)

Posted by [Daniel Clement](#) on August 03, 2010

[Pamela Paul](#), in her New York Times article, [The Un-Divorced](#), discusses the trend of couples separating, but not divorcing. The primary reasons that parties remain married, but separated are the practical and financial, not familial. The effect of endless separations on the children rarely seems a priority.

Perhaps the principle reason couples remain legally wed is to maintain or continue health care coverage. When a couple divorces, the ex-spouse is no longer eligible to be covered through the other's medical coverage. The former spouse either may maintain the existing policy under COBRA or purchase a policy on his/her own.

As pointed out:

If one person has an existing condition, obtaining affordable health care coverage is often difficult or impossible. The recession, with its real estate lows and health care expense highs, adds incentives to separate indefinitely.

A second reason to separate instead of divorce is to obtain lock-in social security benefits.

According to federal law, an ex qualifies for a share of a spouse's Social Security payment if the marriage lasts a decade. In the case of more amicable divorces, financial advisers and lawyers may urge a couple who have been married eight years to wait until the dependent spouse qualifies.

However, a separation without an agreement memorializing the parties understanding of their rights and liabilities leaves the parties at risk.

Property acquired or debts incurred by the other are technically marital and subject to equitable distribution.

Absent a maintenance waiver, if one spouse becomes disabled, unemployed or unemployable, the other may become responsible for paying spousal maintenance.

Finally, if you pre-decease your spouse, your spouse can make a claim against your estate; by virtue of marriage, your spouse has a right of election which prevents you from disinheriting hi/her. The right of election could be waived in a separation agreement.

By entering into a separation agreement, you could get all of the benefits of a separation and limit your exposure to risk.